

Today is Tuesday, January 24, 2017



Republic of the Philippines  
**SUPREME COURT**  
 Manila

EN BANC

**G.R. No. L-49188 January 30, 1990**

**PHILIPPINE AIRLINES, INC.**, petitioner,

vs.

**HON. COURT OF APPEALS, HON. JUDGE RICARDO D. GALANO, Court of First Instance of Manila, Branch XIII, JAIME K. DEL ROSARIO, Deputy Sheriff, Court of First Instance, Manila, and AMELIA TAN, respondents.**

**GUTIERREZ, JR., J.:**

Behind the simple issue of validity of an alias writ of execution in this case is a more fundamental question. Should the Court allow a too literal interpretation of the Rules with an open invitation to knavery to prevail over a more discerning and just approach? Should we not apply the ancient rule of statutory construction that laws are to be interpreted by the spirit which vivifies and not by the letter which killeth?

This is a petition to review on *certiorari* the decision of the Court of Appeals in CA-G.R. No. 07695 entitled "*Philippine Airlines, Inc. v. Hon. Judge Ricardo D. Galano, et al.*", dismissing the petition for certiorari against the order of the Court of First Instance of Manila which issued an alias writ of execution against the petitioner.

The petition involving the alias writ of execution had its beginnings on November 8, 1967, when respondent Amelia Tan, under the name and style of Able Printing Press commenced a complaint for damages before the Court of First Instance of Manila. The case was docketed as Civil Case No. 71307, entitled *Amelia Tan, et al. v. Philippine Airlines, Inc.*

After trial, the Court of First Instance of Manila, Branch 13, then presided over by the late Judge Jesus P. Morfe rendered judgment on June 29, 1972, in favor of private respondent Amelia Tan and against petitioner Philippine Airlines, Inc. (PAL) as follows:

WHEREFORE, judgment is hereby rendered, ordering the defendant Philippine Air Lines:

1. On the first cause of action, to pay to the plaintiff the amount of P75,000.00 as actual damages, with legal interest thereon from plaintiffs extra-judicial demand made by the letter of July 20, 1967;
2. On the third cause of action, to pay to the plaintiff the amount of P18,200.00, representing the unrealized profit of 10% included in the contract price of P200,000.00 plus legal interest thereon from July 20, 1967;
3. On the fourth cause of action, to pay to the plaintiff the amount of P20,000.00 as and for moral damages, with legal interest thereon from July 20, 1967;
4. On the sixth cause of action, to pay to the plaintiff the amount of P5,000.00 damages as and for attorney's fee.

Plaintiffs second and fifth causes of action, and defendant's counterclaim, are dismissed.

With costs against the defendant. (CA Rollo, p. 18)

On July 28, 1972, the petitioner filed its appeal with the Court of Appeals. The case was docketed as CA-G.R. No. 51079-R.

On February 3, 1977, the appellate court rendered its decision, the dispositive portion of which reads:

IN VIEW WHEREOF, with the modification that PAL is condemned to pay plaintiff the sum of P25,000.00 as damages and P5,000.00 as attorney's fee, judgment is affirmed, with costs. (CA Rollo, p. 29)

Notice of judgment was sent by the Court of Appeals to the trial court and on dates subsequent thereto, a motion for reconsideration was filed by respondent Amelia Tan, duly opposed by petitioner PAL.

On May 23, 1977, the Court of Appeals rendered its resolution denying the respondent's motion for reconsideration for lack of merit.

No further appeal having been taken by the parties, the judgment became final and executory and on May 31, 1977, judgment was correspondingly entered in the case.

The case was remanded to the trial court for execution and on September 2, 1977, respondent Amelia Tan filed a motion praying for the issuance of a writ of execution of the judgment rendered by the Court of Appeals. On October 11, 1977, the trial court, presided over by Judge Galano, issued its order of execution with the corresponding writ in favor of the respondent. The writ was duly referred to Deputy Sheriff Emilio Z. Reyes of Branch 13 of the Court of First Instance of Manila for enforcement.

Four months later, on February 11, 1978, respondent Amelia Tan moved for the issuance of an alias writ of execution stating that the judgment rendered by the lower court, and affirmed with modification by the Court of Appeals, remained unsatisfied.

On March 1, 1978, the petitioner filed an opposition to the motion for the issuance of an alias writ of execution stating that it had already fully paid its obligation to plaintiff through the deputy sheriff of the respondent court, Emilio Z. Reyes, as evidenced by cash vouchers properly signed and receipted by said Emilio Z. Reyes.

On March 3, 1978, the Court of Appeals denied the issuance of the alias writ for being premature, ordering the executing sheriff Emilio Z. Reyes to appear with his return and explain the reason for his failure to surrender the amounts paid to him by petitioner PAL. However, the order could not be served upon Deputy Sheriff Reyes who had absconded or disappeared.

On March 28, 1978, motion for the issuance of a partial alias writ of execution was filed by respondent Amelia Tan.

On April 19, 1978, respondent Amelia Tan filed a motion to withdraw "Motion for Partial Alias Writ of Execution" with Substitute Motion for Alias Writ of Execution. On May 1, 1978, the respondent Judge issued an order which reads:

As prayed for by counsel for the plaintiff, the Motion to Withdraw 'Motion for Partial Alias Writ of Execution with Substitute Motion for Alias Writ of Execution is hereby granted, and the motion for partial alias writ of execution is considered withdrawn.

Let an Alias Writ of Execution issue against the defendant for the full satisfaction of the judgment rendered. Deputy Sheriff Jaime K. del Rosario is hereby appointed Special Sheriff for the enforcement thereof. (CA Rollo, p. 34)

On May 18, 1978, the petitioner received a copy of the first alias writ of execution issued on the same day directing Special Sheriff Jaime K. del Rosario to levy on execution in the sum of P25,000.00 with legal interest thereon from July 20, 1967 when respondent Amelia Tan made an extra-judicial demand through a letter. Levy was also ordered for the further sum of P5,000.00 awarded as attorney's fees.

On May 23, 1978, the petitioner filed an urgent motion to quash the alias writ of execution stating that no return of the writ had as yet been made by Deputy Sheriff Emilio Z. Reyes and that the judgment debt had already been fully satisfied by the petitioner as evidenced by the cash vouchers signed and receipted by the server of the writ of execution, Deputy Sheriff Emilio Z. Reyes.

On May 26, 1978, the respondent Jaime K. del Rosario served a notice of garnishment on the depository bank of petitioner, Far East Bank and Trust Company, Rosario Branch, Binondo, Manila, through its manager and garnished the petitioner's deposit in the said bank in the total amount of P64,408.00 as of May 16, 1978. Hence, this petition for certiorari filed by the Philippine Airlines, Inc., on the grounds that:

I

AN ALIAS WRIT OF EXECUTION CANNOT BE ISSUED WITHOUT PRIOR RETURN OF THE ORIGINAL WRIT BY THE IMPLEMENTING OFFICER.

II

**PAYMENT OF JUDGMENT TO THE IMPLEMENTING OFFICER AS DIRECTED IN THE WRIT OF EXECUTION CONSTITUTES SATISFACTION OF JUDGMENT.**

III

INTEREST IS NOT PAYABLE WHEN THE DECISION IS SILENT AS TO THE PAYMENT THEREOF.

IV

SECTION 5, RULE 39, PARTICULARLY REFERS TO LEVY OF PROPERTY OF JUDGMENT DEBTOR AND DISPOSAL OR SALE THEREOF TO SATISFY JUDGMENT.

Can an alias writ of execution be issued without a prior return of the original writ by the implementing officer?

We rule in the affirmative and we quote the respondent court's decision with approval:

The issuance of the questioned alias writ of execution under the circumstances here obtaining is justified because even with the absence of a Sheriff's return on the original writ, the unalterable fact remains that such a return is incapable of being obtained (sic) because the officer who is to make the said return has absconded and cannot be brought to the Court despite the earlier order of the court for him to appear for this purpose. (Order of Feb. 21, 1978, Annex C, Petition). Obviously, taking cognizance of this circumstance, the order of May 11, 1978 directing the issuance of an alias writ was therefore issued. (Annex D. Petition). The need for such a return as a condition precedent for the issuance of an alias writ was justifiably dispensed with by the court below and its action in this regard meets with our concurrence. A contrary view will produce an abhorrent situation whereby the mischief of an erring officer of the court could be utilized to impede indefinitely the undisputed and awarded rights which a prevailing party rightfully deserves to obtain and with dispatch. The final judgment in this case should not indeed be permitted to become illusory or incapable of execution for an indefinite and over extended period, as had already transpired. (Rollo, pp. 35-36)

*Judicium non debet esse illusorium; suum effectum habere debet* (A judgment ought not to be illusory it ought to have its proper effect).

Indeed, technicality cannot be countenanced to defeat the execution of a judgment for execution is the fruit and end of the suit and is very aptly called the life of the law (Ipekjian Merchandising Co. v. Court of Tax Appeals, 8 SCRA 59 [1963]; Commissioner of Internal Revenue v. Visayan Electric Co., 19 SCRA 697, 698 [1967]). A judgment cannot be rendered nugatory by the unreasonable application of a strict rule of procedure. Vested rights were never intended to rest on the requirement of a return, the office of which is merely to inform the court and the parties, of any and all actions taken under the writ of execution. Where such information can be established in some other manner, the absence of an executing officer's return will not preclude a judgment from being treated as discharged or being executed through an alias writ of execution as the case may be. More so, as in the case at bar. Where the return cannot be expected to be forthcoming, to require the same would be to compel the enforcement of rights under a judgment to rest on an impossibility, thereby allowing the total avoidance of judgment debts. So long as a judgment is not satisfied, a plaintiff is entitled to other writs of execution (Government of the Philippines v. Echaus and Gonzales, 71 Phil. 318). It is a well known legal maxim that he who cannot prosecute his judgment with effect, sues his case vainly.

More important in the determination of the propriety of the trial court's issuance of an alias writ of execution is the issue of satisfaction of judgment.

Under the peculiar circumstances surrounding this case, did the payment made to the absconding sheriff by check in his name operate to satisfy the judgment debt? The Court rules that the plaintiff who has won her case should not be adjudged as having sued in vain. To decide otherwise would not only give her an empty but a pyrrhic victory.

It should be emphasized that under the initial judgment, Amelia Tan was found to have been wronged by PAL.

She filed her complaint in 1967.

After ten (10) years of protracted litigation in the Court of First Instance and the Court of Appeals, Ms. Tan won her case.

It is now 1990.

Almost twenty-two (22) years later, Ms. Tan has not seen a centavo of what the courts have solemnly declared as rightfully hers. Through absolutely no fault of her own, Ms. Tan has been deprived of what, technically, she should have been paid from the start, *before 1967*, without need of her going to court to enforce her rights. And all because PAL did not issue the checks intended for her, in her name.

Under the peculiar circumstances of this case, the payment to the absconding sheriff by check in his name did not operate as a satisfaction of the judgment debt.

In general, a payment, in order to be effective to discharge an obligation, must be made to the proper person. Article 1240 of the Civil Code provides:

Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person *authorized to receive it.* (Emphasis supplied)

Thus, payment must be made to the obligee himself or to an agent having authority, express or implied, to receive the particular payment (Ulen v. Knectle 50 Wyo 94, 58 [2d] 446, 111 ALR 65). Payment made to one having apparent authority to receive the money will, as a rule, be treated as though actual authority had been given for its receipt. Likewise, if payment is made to one who by law is authorized to act for the creditor, it will work a discharge (Hendry v. Benlisa 37 Fla. 609, 20 SO 800,34 LRA 283). The receipt of money due on a judgment by an officer authorized by law to accept it will, therefore, satisfy the debt (See 40 Am Jm 729, 25; Hendry v. Benlisa *supra*; Seattle v. Stirrat 55 Wash. 104 p. 834,24 LRA [NS] 1275).

The theory is where payment is made to a person authorized and recognized by the creditor, the payment to such a person so authorized is deemed payment to the creditor. Under ordinary circumstances, payment by the judgment debtor in the case at bar, to the sheriff should be valid payment to extinguish the judgment debt.

There are circumstances in this case, however, which compel a different conclusion.

The payment made by the petitioner to the absconding sheriff was not in cash or legal tender but in checks. The checks were not payable to Amelia Tan or Able Printing Press but to the absconding sheriff.

Did such payments extinguish the judgment debt?

Article 1249 of the Civil Code provides:

The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

In the meantime, the action derived from the original obligation shall be held in abeyance.

In the absence of an agreement, either express or implied, payment means the discharge of a debt or obligation in money (US v. Robertson, 5 Pet. [US] 641, 8 L. ed. 257) and unless the parties so agree, a debtor has no rights, except at his own peril, to substitute something in lieu of cash as medium of payment of his debt (Anderson v. Gill, 79 Md.. 312, 29 A 527, 25 LRA 200,47 Am. St. Rep. 402). Consequently, unless authorized to do so by law or by consent of the obligee a public officer has no authority to accept anything other than money in payment of an obligation under a judgment being executed. Strictly speaking, the acceptance by the sheriff of the petitioner's checks, in the case at bar, does not, *per se*, operate as a discharge of the judgment debt.

Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment (See. 189, Act 2031 on Negs. Insts.; Art. 1249, Civil Code; Bryan Landon Co. v. American Bank, 7 Phil. 255; Tan Sunco v. Santos, 9 Phil. 44; 21 R.C.L. 60, 61). A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor. Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized (Art. 1249, Civil Code, par. 3).

If bouncing checks had been issued in the name of Amelia Tan and not the Sheriff's, there would have been no payment. After dishonor of the checks, Ms. Tan could have run after other properties of PAL. The theory is that she has received no value for what had been awarded her. Because the checks were drawn in the name of Emilio Z. Reyes, neither has she received anything. The same rule should apply.

It is argued that if PAL had paid in cash to Sheriff Reyes, there would have been payment in full legal contemplation. The reasoning is logical but is it valid and proper? Logic has its limits in decision making. We should not follow rulings to their logical extremes if in doing so we arrive at unjust or absurd results.

In the first place, PAL *did not pay in cash.* It paid in checks.

And second, payment in cash always carries with it certain cautions. Nobody hands over big amounts of cash in a careless and inane manner. Mature thought is given to the possibility of the cash being lost, of the bearer being

waylaid or running off with what he is carrying for another. Payment in checks is precisely intended to avoid the possibility of the money going to the wrong party. The situation is entirely different where a Sheriff seizes a car, a tractor, or a piece of land. Logic often has to give way to experience and to reality. Having paid with checks, PAL should have done so properly.

Payment in money or cash to the implementing officer may be deemed absolute payment of the judgment debt but the Court has never, in the least bit, suggested that judgment debtors should settle their obligations by turning over huge amounts of cash or legal tender to sheriffs and other executing officers. Payment in cash would result in damage or interminable litigations each time a sheriff with huge amounts of cash in his hands decides to abscond.

As a protective measure, therefore, the courts encourage the practice of payments by check provided adequate controls are instituted to prevent wrongful payment and illegal withdrawal or disbursement of funds. If particularly big amounts are involved, escrow arrangements with a bank and carefully supervised by the court would be the safer procedure. Actual transfer of funds takes place within the safety of bank premises. These practices are perfectly legal. The object is always the safe and incorrupt execution of the judgment.

It is, indeed, out of the ordinary that checks intended for a particular payee are made out in the name of another. Making the checks payable to the judgment creditor would have prevented the encashment or the taking of undue advantage by the sheriff, or any person into whose hands the checks may have fallen, whether wrongfully or in behalf of the creditor. The issuance of the checks in the name of the sheriff clearly made possible the misappropriation of the funds that were withdrawn.

As explained and held by the respondent court:

... [K]nowing as it does that the intended payment was for the private party respondent Amelia Tan, the petitioner corporation, utilizing the services of its personnel who are or should be knowledgeable about the accepted procedures and resulting consequences of the checks drawn, nevertheless, in this instance, without prudence, departed from what is generally observed and done, and placed as payee in the checks the name of the errant Sheriff and not the name of the rightful payee. Petitioner thereby created a situation which permitted the said Sheriff to personally encash said checks and misappropriate the proceeds thereof to his exclusive personal benefit. For the prejudice that resulted, the petitioner himself must bear the fault. The judicial guideline which we take note of states as follows:

As between two innocent persons, one of whom must suffer the consequence of a breach of trust, the one who made it possible by his act of confidence must bear the loss. (Blondeau, et al. v. Nano, et al., L-41377, July 26, 1935, 61 Phil. 625)

Having failed to employ the proper safeguards to protect itself, the judgment debtor whose act made possible the loss had but itself to blame.

The attention of this Court has been called to the bad practice of a number of executing officers, of requiring checks in satisfaction of judgment debts to be made out in their own names. If a sheriff directs a judgment debtor to issue the checks in the sheriff's name, claiming he must get his commission or fees, the debtor must report the sheriff immediately to the court which ordered the execution or to the Supreme Court for appropriate disciplinary action. Fees, commissions, and salaries are paid through regular channels. This improper procedure also allows such officers, who have sixty (60) days within which to make a return, to treat the moneys as their personal finds and to deposit the same in their private accounts to earn sixty (60) days interest, before said finds are turned over to the court or judgment creditor (See Balgos v. Velasco, 108 SCRA 525 [1981]). Quite as easily, such officers could put up the defense that said checks had been issued to them in their private or personal capacity. Without a receipt evidencing payment of the judgment debt, the misappropriation of finds by such officers becomes clean and complete. The practice is ingenious but evil as it unjustly enriches court personnel at the expense of litigants and the proper administration of justice. The temptation could be far greater, as proved to be in this case of the absconding sheriff. The correct and prudent thing for the petitioner was to have issued the checks in the intended payee's name.

The pernicious effects of issuing checks in the name of a person other than the intended payee, without the latter's agreement or consent, are as many as the ways that an artful mind could concoct to get around the safeguards provided by the law on negotiable instruments. An angry litigant who loses a case, as a rule, would not want the winning party to get what he won in the judgment. He would think of ways to delay the winning party's getting what has been adjudged in his favor. We cannot condone that practice especially in cases where the courts and their officers are involved. We rule against the petitioner.

Anent the applicability of Section 15, Rule 39, as follows:

**Section 15. Execution of money judgments.** — The officer must enforce an execution of a money judgment by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if they be sufficient, and selling the same, *and paying to the judgment creditor*, or his attorney, so much of the proceeds as will satisfy the judgment. ...

the respondent court held:

We are obliged to rule that the judgment debt cannot be considered satisfied and therefore the orders of the respondent judge granting the alias writ of execution may not be pronounced as a nullity.

xxx xxx xxx

It is clear and manifest that after levy or garnishment, for a judgment to be executed there is the requisite of payment by the officer to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment and none such payment had been concededly made yet by the absconding Sheriff to the private respondent Amelia Tan. The ultimate and essential step to complete the execution of the judgment not having been performed by the City Sheriff, the judgment debt legally and factually remains unsatisfied.

Strictly speaking execution cannot be equated with satisfaction of a judgment. Under unusual circumstances as those obtaining in this petition, the distinction comes out clearly.

Execution is the process which carries into effect a decree or judgment (*Painter v. Berglund*, 31 Cal. App. 2d. 63, 87 P 2d 360, 363; *Miller v. London*, 294 Mass 300, 1 NE 2d 198, 200; *Black's Law Dictionary*), whereas the satisfaction of a judgment is the payment of the amount of the writ, or a lawful tender thereof, or the conversion by sale of the debtor's property into an amount equal to that due, and, it may be done otherwise than upon an execution (Section 47, Rule 39). Levy and delivery by an execution officer are not prerequisites to the satisfaction of a judgment when the same has already been realized in fact (Section 47, Rule 39). Execution is for the sheriff to accomplish while satisfaction of the judgment is for the creditor to achieve. Section 15, Rule 39 merely provides the sheriff with his duties as executing officer including delivery of the proceeds of his levy on the debtor's property to satisfy the judgment debt. It is but to stress that the implementing officer's duty should not stop at his receipt of payments but must continue until payment is delivered to the obligor or creditor.

Finally, we find no error in the respondent court's pronouncement on the inclusion of interests to be recovered under the alias writ of execution. This logically follows from our ruling that PAL is liable for both the lost checks and interest. The respondent court's decision in CA-G.R. No. 51079-R does not totally supersede the trial court's judgment in Civil Case No. 71307. It merely modified the same as to the principal amount awarded as actual damages.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED. The judgment of the respondent Court of Appeals is AFFIRMED and the trial court's issuance of the alias writ of execution against the petitioner is upheld without prejudice to any action it should take against the errant sheriff Emilio Z. Reyes. The Court Administrator is ordered to follow up the actions taken against Emilio Z. Reyes.

SO ORDERED.

*Fernan, C.J., Cruz, Paras, Bidin, Griño-Aquino, Medialdea and Regalado, JJ., concur.*

## Separate Opinions

**NARVASA, J., dissenting:**

The execution of final judgments and orders is a function of the sheriff, an officer of the court whose authority is by and large statutorily determined to meet the particular exigencies arising from or connected with the performance of the multifarious duties of the office. It is the acknowledgment of the many dimensions of this authority, defined by statute and chiselled by practice, which compels me to disagree with the decision reached by the majority.

A consideration of the wide latitude of discretion allowed the sheriff as the officer of the court most directly involved with the implementation and execution of final judgments and orders persuades me that PAL's payment to the sheriff of its judgment debt to Amelia Tan, though made by check issued in said officer's name, lawfully satisfied said obligation and foreclosed further recourse therefor against PAL, notwithstanding the sheriffs failure to deliver to Tan the proceeds of the check.

It is a matter of history that the judiciary .. is an inherit or of the Anglo-American tradition. While the common law as such .. "is not in force" in this jurisdiction, "to breathe the breath of life into many of the institutions, introduced [here] under American sovereignty, recourse must be had to the rules, principles and doctrines of the common law under whose protecting aegis the prototypes of these institutions had their birth" A sheriff is "an officer of great antiquity," and was also called the *shire reeve*. A shire in English law is a Saxon word signifying a division later called a county. A reeve is an ancient English officer of justice inferior in rank to an alderman .. appointed to process, keep the King's peace, and put the laws in execution. From a very remote period in English constitutional history .. the shire had another officer, namely the shire reeve or as we say, the sheriff. .. The Sheriff was the special representative of the legal or central authority, and as such usually nominated by the King. .. Since the earliest times, both in England and the United States, a sheriff has continued his status as an adjunct of the court .. . As it was there, so it has been in the Philippines from the time of the organization of the judiciary .. . (J. Fernando's concurring opinion in *Bagatsing v. Herrera*, 65 SCRA 434)

One of a sheriff s principal functions is to execute final judgments and orders. The Rules of Court require the writs of execution to issue to him, directing him to enforce such judgments and orders in the manner therein provided (Rule 39). The mode of enforcement varies according to the nature of the judgment to be carried out: whether it be against property of the judgment debtor in his hands or in the hands of a third person i.e. money judgment), or for the sale of property, real or personal (i.e. foreclosure of mortgage) or the delivery thereof, etc. (sec. 8, Rule 39).

Under sec. 15 of the same Rule, the sheriff is empowered to levy on so much of the judgment debtor's property as may be sufficient to enforce the money judgment and sell these properties at public auction after due notice to satisfy the adjudged amount. It is the sheriff who, after the auction sale, conveys to the purchaser the property thus sold (secs. 25, 26, 27, Rule 39), and pays the judgment creditor so much of the proceeds as will satisfy the judgment. When the property sold by him on execution is an immovable which consequently gives rise to a right of redemption on the part of the judgment debtor and others (secs. 29, 30, Rule 39), it is to him (or to the purchaser or redemptioner that the payments may be made by those declared by law as entitled to redeem (sec. 31, Rule 39); and in this situation, it becomes his duty to accept payment and execute the certificate of redemption (*Enage v. Vda. y Hijos de Escano*, 38 Phil. 657, cited in Moran, *Comments on the Rules of Court*, 1979 ed., vol. 2, pp. 326-327). It is also to the sheriff that "written notice of any redemption must be given and a duplicate filed with the registrar of deeds of the province, and if any assessments or taxes are paid by the redemptioner or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the registrar of deeds," the effect of failure to file such notice being that redemption may be made without paying such assessments, taxes, or liens (sec. 30, Rule 39).

The sheriff may likewise be appointed a receiver of the property of the judgment debtor where the appointment of the receiver is deemed necessary for the execution of the judgment (sec. 32, Rule 39).

At any time before the sale of property on execution, the judgment debtor may prevent the sale by paying the sheriff the amount required by the execution and the costs that have been incurred therein (sec. 20, Rule 39).

The sheriff is also authorized to receive payments on account of the judgment debt tendered by "a person indebted to the judgment debtor," and his "receipt shall be a sufficient discharge for the amount so paid or directed to be credited by the judgment creditor on the execution" (sec. 41, Rule 39).

Now, obviously, the sheriff s sale extinguishes the liability of the judgment debtor either in full, if the price paid by the highest bidder is equal to, or more than the amount of the judgment or *pro tanto* if the price fetched at the sale be less. Such extinction is not in any way dependent upon the judgment creditor's receiving the amount realized, so that the conversion or embezzlement of the proceeds of the sale by the sheriff does not revive the judgment debt or render the judgment creditor liable anew therefor.

So, also, the taking by the sheriff of, say, personal property from the judgment debtor for delivery to the judgment creditor, in fulfillment of the verdict against him, extinguishes the debtor's liability; and the conversion of said property by the sheriff, does not make said debtor responsible for replacing the property or paying the value thereof.

In the instances where the Rules allow or direct payments to be made to the sheriff, the payments may be made by check, but it goes without saying that if the sheriff so desires, he may require payment to be made in lawful

money. If he accepts the check, he places himself in a position where he would be liable to the judgment creditor if any damages are suffered by the latter as a result of the medium in which payment was made (Javellana v. Mirasol, et al., 40 Phil. 761). The validity of the payment made by the judgment debtor, however, is in no wise affected and the latter is discharged from his obligation to the judgment creditor as of the moment the check issued to the sheriff is encashed and the proceeds are received by Id. office. The issuance of the check to a person authorized to receive it (Art. 1240, Civil Code; See. 46 of the Code of Civil Procedure; Enage v. Vda y Hijos de Escano, 38 Phil. 657, cited in Javellana v. Mirasol, 40 Phil. 761) operates to release the judgment debtor from any further obligations on the judgment.

The sheriff is an adjunct of the court; a court functionary whose competence involves both discretion and personal liability (concurring opinion of J. Fernando, citing Uy Piaoco v. Osmena, 9 Phil. 299, in Bagatsing v. Herrera, 65 SCRA 434). Being an officer of the court and acting within the scope of his authorized functions, the sheriff's receipt of the checks in payment of the judgment execution, may be deemed, in legal contemplation, as received by the court itself (Lara v. Bayona, 10 May 1955, No. L- 10919).

That the sheriff functions as a conduit of the court is further underscored by the fact that one of the requisites for appointment to the office is the execution of a bond, "conditioned (upon) the faithful performance of his (the appointee's) duties .. for the delivery or payment to Government, or the person entitled thereto, of all properties or sums of money that shall officially come into his hands" (sec. 330, Revised Administrative Code).

There is no question that the checks came into the sheriff's possession in his official capacity. The court may require of the judgment debtor, in complying with the judgment, no further burden than his vigilance in ensuring that the person he is paying money or delivering property to is a person authorized by the court to receive it. Beyond this, further expectations become unreasonable. To my mind, a proposal that would make the judgment debtor unqualifiedly the insurer of the judgment creditor's entitlement to the judgment amount which is really what this case is all about begs the question.

That the checks were made out in the sheriff's name (a practice, by the way, of long and common acceptance) is of little consequence if juxtaposed with the extent of the authority explicitly granted him by law as the officer entrusted with the power to execute and implement court judgments. The sheriff's requirement that the checks in payment of the judgment debt be issued in his name was simply an assertion of that authority; and PAL's compliance cannot in the premises be faulted merely because of the sheriff's subsequent malfeasance in absconding with the payment instead of turning it over to the judgment creditor.

If payment had been in cash, no question about its validity or of the authority and duty of the sheriff to accept it in settlement of PAL's judgment obligation would even have arisen. Simply because it was made by checks issued in the sheriff's name does not warrant reaching any different conclusion.

As payment to the court discharges the judgment debtor from his responsibility on the judgment, so too must payment to the person designated by such court and authorized to act in its behalf, operate to produce the same effect.

It is unfortunate and deserving of commiseration that Amelia Tan was deprived of what was adjudged to her when the sheriff misappropriated the payment made to him by PAL in dereliction of his sworn duties. But I submit that her remedy lies, not here and in reviving liability under a judgment already lawfully satisfied, but elsewhere.

ACCORDINGLY, I vote to grant the petition.

*Melencio-Herrera, Gancayco, J., concurs.*

**FELICIANO, J., dissenting:**

I concur in the able dissenting opinions of Narvaza and Padilla, JJ. and would merely wish to add a few footnotes to their lucid opinions.

1. Narvaza, J. has demonstrated in detail that a sheriff is *authorized* by the Rules of Court and our case law to receive either legal tender or checks from the judgment debtor in satisfaction of the judgment debt. In addition, Padilla, J. has underscored the *obligation* of the sheriff, imposed upon him by the nature of his office and the law, to turn over such legal tender, checks and proceeds of execution sales to the judgment creditor. The failure of a sheriff to effect such turnover and his conversion of the funds (or goods) held by him to his own uses, do not have the effect of frustrating payment by and consequent discharge of the judgment debtor.

To hold otherwise would be to throw the risk of the sheriff faithfully performing his duty as a public officer upon those members of the general public who are compelled to deal with him. It seems to me

that a judgment debtor who turns over funds or property to the sheriff can not reasonably be made an insurer of the honesty and integrity of the sheriff and that the risk of the sheriff carrying out his duties honestly and faithfully is properly lodged in the State itself. The sheriff, like all other officers of the court, is appointed and paid and controlled and disciplined by the Government, more specifically by this Court. The public surely has a duty to report possible wrongdoing by a sheriff or similar officer to the proper authorities and, if necessary, to testify in the appropriate judicial and administrative disciplinary proceedings. But to make the individual members of the general community insurers of the honest performance of duty of a sheriff, or other officer of the court, over whom they have no control, is not only deeply unfair to the former. It is also a confession of comprehensive failure and comes too close to an abdication of duty on the part of the Court itself. This Court should have no part in that.

2. I also feel compelled to comment on the majority opinion written by Gutierrez, J. with all his customary and special way with words. My learned and eloquent brother in the Court apparently accepts the proposition that payment by a judgment debtor of cash to a sheriff produces the legal effects of payment, the sheriff being authorized to accept such payment. Thus, in page 10 of his *porenencia*, Gutierrez, J. writes:

The receipt of money due on a judgment by an officer authorized by law to accept it will satisfy the debt. (Citations omitted)

The theory is where payment is made to a person authorized and recognized by the creditor, the payment to such a person so authorized is deemed payment to the creditor. Under ordinary circumstances, payment by the judgment debtor in the case at bar, to the sheriff would be valid payment to extinguish the judgment debt.

Shortly thereafter, however, Gutierrez, J. backs off from the above position and strongly implies that payment in cash to the sheriff is sheer imprudence on the part of the judgment debtor and that therefore, should the sheriff abscond with the cash, the judgment debtor has not validly discharged the judgment debt:

It is argued that if PAL had paid in cash to Sheriff Reyes, there would have been payment in full legal contemplation. The reasoning is logical but is it valid and proper?

In the first place, PAL *did not pay in cash*. It paid in checks.

And second, payment in cash always carries with it certain cautions. Nobody hands over big amounts of cash in a careless and inane manner. Mature thought is given to the possibility of the cash being lost, of the bearer being waylaid or running off with what he is carrying for another. Payment in checks is precisely intended to avoid the possibility of the money going to the wrong party....

Payment in money or cash to the implementing officer may be deemed absolute payment of the judgment debt but the court has never, in the least bit, suggested that judgment debtors should settle their obligations by turning over huge amounts of cash or legal tender to sheriffs and other executing officers. ... (Emphasis in the original) (Majority opinion, pp. 12-13)

There is no dispute with the suggestion apparently made that maximum safety is secured where the judgment debtor delivers to the sheriff not cash but a *check* made out, not in the name of the sheriff, but *in the judgment creditor's name*. The fundamental point that must be made, however, is that under our law only cash is legal tender and that the sheriff can be compelled to accept *only cash* and not checks, even if made out to the name of the judgment creditor.<sup>1</sup> The sheriff could have quite lawfully required PAL to deliver to him only cash, i.e., Philippine currency. If the sheriff had done so, and if PAL had complied with such a requirement, as it would have had to, one would have to agree that legal payment must be deemed to have been effected. It requires no particularly acute mind to note that a dishonest sheriff could easily convert the money and abscond. The fact that the sheriff in the instant case required, not cash to be delivered to him, but rather a check made out in his name, does *not* change the legal situation. PAL did *not* thereby become negligent; it did *not* make the loss anymore possible or probable than if it had instead delivered plain cash to the sheriffs.

It seems to me that the majority opinion's real premise is the unspoken one that the judgment debtor should bear the risk of the fragility of the sheriff's virtue until the money or property parted with by the judgment debtor actually reaches the hands of the judgment creditor. This brings me back to my earlier point that risk is most appropriately borne not by the judgment debtor, nor indeed by the judgment creditor, but by the State itself. The Court requires all sheriffs to post good and adequate fidelity bonds before entering upon the performance of their duties and, presumably, to maintain such bonds in force and effect throughout their stay in office.<sup>2</sup> The judgment creditor, in circumstances like those of the instant case, could be allowed to execute upon the absconding sheriff's bond.<sup>3</sup>

I believe the Petition should be granted and I vote accordingly.

### PADILLA, J., Dissenting Opinion

From the facts that appear to be undisputed, I reach a conclusion different from that of the majority. Sheriff Emilio Z. Reyes, the trial court's authorized sheriff, armed with a writ of execution to enforce a final money judgment against the petitioner Philippine Airlines (PAL) in favor of private respondent Amelia Tan, proceeded to petitioner PAL's office to implement the writ.

There is no question that Sheriff Reyes, in enforcing the writ of execution, was acting with full authority as an officer of the law and not in his personal capacity. Stated differently, PAL had every right to assume that, as an officer of the law, Sheriff Reyes would perform his duties as enjoined by law. It would be grossly unfair to now charge PAL with advanced or constructive notice that Mr. Reyes would abscond and not deliver to the judgment creditor the proceeds of the writ of execution. If a judgment debtor cannot rely on and trust an officer of the law, as the Sheriff, whom else can he trust?

Pursued to its logical extreme, if PAL had delivered to Sheriff Reyes the amount of the judgment in CASH, i.e. Philippine currency, with the corresponding receipt signed by Sheriff Reyes, this would have been payment by PAL in full legal contemplation, because under Article 1240 of the Civil Code, "payment shall be made to the person in whose favor the obligation has been constituted or his successor in interest or *any person authorized to receive it.*" And said payment if made by PAL in cash, i.e., Philippine currency, to Sheriff Reyes would have satisfied PAL's judgment obligation, as payment is a legally recognized mode for extinguishing one's obligation. (Article 1231, Civil Code).

Under Sec. 15, Rule 39, Rules of Court which provides that-

**Sec. 15. Execution of money judgments.** — The officer must enforce an execution of a money judgment by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and *paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment.* ... . (emphasis supplied)

it would be the duty of Sheriff Reyes to pay to the judgment creditor the proceeds of the execution i.e., the cash received from PAL (under the above assumption). But, the duty of the sheriff to pay the cash to the judgment creditor would be a matter separate the distinct from the fact that PAL would have satisfied its judgment obligation to Amelia Tan, the judgment creditor, by delivering the cash amount due under the judgment to Sheriff Reyes.

Did the situation change by PAL's delivery of its two (2) checks totalling P30,000.00 drawn against its bank account, payable to Sheriff Reyes, for account of the judgment rendered against PAL? I do not think so, because when Sheriff Reyes encashed the checks, the encashment was in fact a payment by PAL to Amelia Tan through Sheriff Reyes, an officer of the law authorized to receive payment, and such payment discharged PAL'S obligation under the executed judgment.

If the PAL checks in question had not been encashed by Sheriff Reyes, there would be no payment by PAL and, consequently no discharge or satisfaction of its judgment obligation. But the checks had been encashed by Sheriff Reyes giving rise to a situation as if PAL had paid Sheriff Reyes in cash, i.e., Philippine currency. This, we repeat, is payment, in legal contemplation, on the part of PAL and this payment legally discharged PAL from its judgment obligation to the judgment creditor. To be sure, the same encashment by Sheriff Reyes of PAL's checks delivered to him in his official capacity as Sheriff, imposed an obligation on Sheriff Reyes to pay and deliver the proceeds of the encashment to Amelia Tan who is deemed to have acquired a cause of action against Sheriff Reyes for his failure to deliver to her the proceeds of the encashment. As held:

Payment of a judgment, to operate as a release or satisfaction, even *pro tanto* must be made to the plaintiff or to some person authorized by him, or by law, to receive it. The payment of money to the sheriff having an execution satisfies it, and, if the plaintiff fails to receive it, his only remedy is against the officer (Henderson v. Planters' and Merchants Bank, 59 SO 493, 178 Ala. 420).

Payment of an execution satisfies it without regard to whether the officer pays it over to the creditor or misapplies it (340, 33 C.J.S. 644, citing Elliot v. Higgins, 83 N.C. 459). If defendant consents to the Sheriff s misapplication of the money, however, defendant is estopped to claim that the debt is satisfied (340, 33 C.J.S. 644, citing Heptinstall v. Medlin 83 N.C. 16).

The above rulings find even more cogent application in the case at bar because, as contended by petitioner PAL (not denied by private respondent), when Sheriff Reyes served the writ of execution on PAL, he (Reyes) was

accompanied by private respondent's counsel. Prudence dictated that when PAL delivered to Sheriff Reyes the two (2) questioned checks (payable to Sheriff Reyes), private respondent's counsel should have insisted on their immediate encashment by the Sheriff with the drawee bank in order to promptly get hold of the amount belonging to his client, the judgment creditor.

ACCORDINGLY, I vote to grant the petition and to quash the court a quo's *alias* writ of execution.

*Melencio-Herrera, Gancayco, Sarmiento, Cortes, JJ., concurs.*

## Separate Opinions

**NARVASA, J.**, dissenting:

The execution of final judgments and orders is a function of the sheriff, an officer of the court whose authority is by and large statutorily determined to meet the particular exigencies arising from or connected with the performance of the multifarious duties of the office. It is the acknowledgment of the many dimensions of this authority, defined by statute and chiselled by practice, which compels me to disagree with the decision reached by the majority.

A consideration of the wide latitude of discretion allowed the sheriff as the officer of the court most directly involved with the implementation and execution of final judgments and orders persuades me that PAL's payment to the sheriff of its judgment debt to Amelia Tan, though made by check issued in said officer's name, lawfully satisfied said obligation and foreclosed further recourse therefor against PAL, notwithstanding the sheriffs failure to deliver to Tan the proceeds of the check.

It is a matter of history that the judiciary .. is an inherit or of the Anglo-American tradition. While the common law as such .. "is not in force" in this jurisdiction, "to breathe the breath of life into many of the institutions, introduced [here] under American sovereignty, recourse must be had to the rules, principles and doctrines of the common law under whose protecting aegis the prototypes of these institutions had their birth" A sheriff is "an officer of great antiquity," and was also called the shire reeve. A shire in English law is a Saxon word signifying a division later called a county. A reeve is an ancient English officer of justice inferior in rank to an alderman .. appointed to process, keep the King's peace, and put the laws in execution. From a very remote period in English constitutional history .. the shire had another officer, namely the shire reeve or as we say, the sheriff. .. The Sheriff was the special representative of the legal or central authority, and as such usually nominated by the King. .. Since the earliest times, both in England and the United States, a sheriff has continued his status as an adjunct of the court .. . As it was there, so it has been in the Philippines from the time of the organization of the judiciary .. . (J. Fernando's concurring opinion in Bagatsing v. Herrera, 65 SCRA 434)

One of a sheriff s principal functions is to execute final judgments and orders. The Rules of Court require the writs of execution to issue to him, directing him to enforce such judgments and orders in the manner therein provided (Rule 39). The mode of enforcement varies according to the nature of the judgment to be carried out: whether it be against property of the judgment debtor in his hands or in the hands of a third person i.e. money judgment), or for the sale of property, real or personal (i.e. foreclosure of mortgage) or the delivery thereof, etc. (sec. 8, Rule 39).

Under sec. 15 of the same Rule, the sheriff is empowered to levy on so much of the judgment debtor's property as may be sufficient to enforce the money judgment and sell these properties at public auction after due notice to satisfy the adjudged amount. It is the sheriff who, after the auction sale, conveys to the purchaser the property thus sold (secs. 25, 26, 27, Rule 39), and pays the judgment creditor so much of the proceeds as will satisfy the judgment. When the property sold by him on execution is an immovable which consequently gives rise to a right of redemption on the part of the judgment debtor and others (secs. 29, 30, Rule 39), it is to him (or to the purchaser or redemptioner that the payments may be made by those declared by law as entitled to redeem (sec. 31, Rule 39); and in this situation, it becomes his duty to accept payment and execute the certificate of redemption (Enage v. Vda. y Hijos de Escano, 38 Phil. 657, cited in Moran, Comments on the Rules of Court, 1979 ed., vol. 2, pp. 326-327). It is also to the sheriff that "written notice of any redemption must be given and a duplicate filed with the registrar of deeds of the province, and if any assessments or taxes are paid by the redemptioner or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the registrar of deeds," the effect of failure to file such notice being that redemption may be made without paying such assessments, taxes, or liens (sec. 30, Rule 39).

The sheriff may likewise be appointed a receiver of the property of the judgment debtor where the appointment of the receiver is deemed necessary for the execution of the judgment (sec. 32, Rule 39).

At any time before the sale of property on execution, the judgment debtor may prevent the sale by paying the sheriff the amount required by the execution and the costs that have been incurred therein (sec. 20, Rule 39).

The sheriff is also authorized to receive payments on account of the judgment debt tendered by "a person indebted to the judgment debtor," and his "receipt shall be a sufficient discharge for the amount so paid or directed to be credited by the judgment creditor on the execution" (sec. 41, Rule 39).

Now, obviously, the sheriff's sale extinguishes the liability of the judgment debtor either in full, if the price paid by the highest bidder is equal to, or more than the amount of the judgment or *pro tanto* if the price fetched at the sale be less. Such extinction is not in any way dependent upon the judgment creditor's receiving the amount realized, so that the conversion or embezzlement of the proceeds of the sale by the sheriff does not revive the judgment debt or render the judgment creditor liable anew therefor.

So, also, the taking by the sheriff of, say, personal property from the judgment debtor for delivery to the judgment creditor, in fulfillment of the verdict against him, extinguishes the debtor's liability; and the conversion of said property by the sheriff, does not make said debtor responsible for replacing the property or paying the value thereof.

In the instances where the Rules allow or direct payments to be made to the sheriff, the payments may be made by check, but it goes without saying that if the sheriff so desires, he may require payment to be made in lawful money. If he accepts the check, he places himself in a position where he would be liable to the judgment creditor if any damages are suffered by the latter as a result of the medium in which payment was made (*Javellana v. Mirasol*, et al., 40 Phil. 761). The validity of the payment made by the judgment debtor, however, is in no wise affected and the latter is discharged from his obligation to the judgment creditor as of the moment the check issued to the sheriff is encashed and the proceeds are received by Id. office. The issuance of the check to a person authorized to receive it (Art. 1240, Civil Code; See. 46 of the Code of Civil Procedure; *Enage v. Vda y Hijos de Escano*, 38 Phil. 657, cited in *Javellana v. Mirasol*, 40 Phil. 761) operates to release the judgment debtor from any further obligations on the judgment.

The sheriff is an adjunct of the court; a court functionary whose competence involves both discretion and personal liability (concurring opinion of J. Fernando, citing *Uy Piaoco v. Osmena*, 9 Phil. 299, in *Bagatsing v. Herrera*, 65 SCRA 434). Being an officer of the court and acting within the scope of his authorized functions, the sheriff's receipt of the checks in payment of the judgment execution, may be deemed, in legal contemplation, as received by the court itself (*Lara v. Bayona*, 10 May 1955, No. L- 10919).

That the sheriff functions as a conduit of the court is further underscored by the fact that one of the requisites for appointment to the office is the execution of a bond, "conditioned (upon) the faithful performance of his (the appointee's) duties .. for the delivery or payment to Government, or the person entitled thereto, of all properties or sums of money that shall officially come into his hands" (sec. 330, Revised Administrative Code).

There is no question that the checks came into the sheriff's possession in his official capacity. The court may require of the judgment debtor, in complying with the judgment, no further burden than his vigilance in ensuring that the person he is paying money or delivering property to is a person authorized by the court to receive it. Beyond this, further expectations become unreasonable. To my mind, a proposal that would make the judgment debtor unqualifiedly the insurer of the judgment creditor's entitlement to the judgment amount which is really what this case is all about-begs the question.

That the checks were made out in the sheriff's name (a practice, by the way, of long and common acceptance) is of little consequence if juxtaposed with the extent of the authority explicitly granted him by law as the officer entrusted with the power to execute and implement court judgments. The sheriff's requirement that the checks in payment of the judgment debt be issued in his name was simply an assertion of that authority; and PAL's compliance cannot in the premises be faulted merely because of the sheriff's subsequent malfeasance in absconding with the payment instead of turning it over to the judgment creditor.

If payment had been in cash, no question about its validity or of the authority and duty of the sheriff to accept it in settlement of PAL's judgment obligation would even have arisen. Simply because it was made by checks issued in the sheriff's name does not warrant reaching any different conclusion.

As payment to the court discharges the judgment debtor from his responsibility on the judgment, so too must payment to the person designated by such court and authorized to act in its behalf, operate to produce the same effect.

It is unfortunate and deserving of commiseration that Amelia Tan was deprived of what was adjudged to her when the sheriff misappropriated the payment made to him by PAL in dereliction of his sworn duties. But I submit that

her remedy lies, not here and in reviving liability under a judgment already lawfully satisfied, but elsewhere.

ACCORDINGLY, I vote to grant the petition.

*Melencio-Herrera, Gancayco, J., concurs.*

**FELICIANO, J., dissenting:**

I concur in the able dissenting opinions of Narvaza and Padilla, JJ. and would merely wish to add a few footnotes to their lucid opinions.

1. Narvaza, J. has demonstrated in detail that a sheriff is *authorized* by the Rules of Court and our case law to receive either legal tender or checks from the judgment debtor in satisfaction of the judgment debt. In addition, Padilla, J. has underscored the *obligation* of the sheriff, imposed upon him by the nature of his office and the law, to turn over such legal tender, checks and proceeds of execution sales to the judgment creditor. The failure of a sheriff to effect such turnover and his conversion of the funds (or goods) held by him to his own uses, do not have the effect of frustrating payment by and consequent discharge of the judgment debtor.

To hold otherwise would be to throw the risk of the sheriff faithfully performing his duty as a public officer upon those members of the general public who are compelled to deal with him. It seems to me that a judgment debtor who turns over funds or property to the sheriff can not reasonably be made an insurer of the honesty and integrity of the sheriff and that the risk of the sheriff carrying out his duties honestly and faithfully is properly lodged in the State itself. The sheriff, like all other officers of the court, is appointed and paid and controlled and disciplined by the Government, more specifically by this Court. The public surely has a duty to report possible wrongdoing by a sheriff or similar officer to the proper authorities and, if necessary, to testify in the appropriate judicial and administrative disciplinary proceedings. But to make the individual members of the general community insurers of the honest performance of duty of a sheriff, or other officer of the court, over whom they have no control, is not only deeply unfair to the former. It is also a confession of comprehensive failure and comes too close to an abdication of duty on the part of the Court itself. This Court should have no part in that.

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The receipt of money due on a judgment by an officer authorized by law to accept it will satisfy the debt. (Citations omitted)

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It is argued that if PAL had paid in cash to Sheriff Reyes, there would have been payment in full legal contemplation. The reasoning is logical but is it valid and proper?

In the first place, PAL *did not pay in cash*. It paid in checks.

And second, payment in cash always carries with it certain cautions. Nobody hands over big amounts of cash in a careless and inane manner. Mature thought is given to the possibility of the cash being lost, of the bearer being waylaid or running off with what he is carrying for another. Payment in checks is precisely intended to avoid the possibility of the money going to the wrong party....

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There is no dispute with the suggestion apparently made that maximum safety is secured where the judgment debtor delivers to the sheriff not cash but a *check* made out, not in the name of the sheriff, but *in the judgment creditor's name*. The fundamental point that must be made, however, is that under our law only cash is legal tender and that the sheriff can be compelled to accept *only cash* and not checks, *even if made out to the name of the judgment creditor*.<sup>1</sup> The sheriff could have quite lawfully required PAL to deliver to him only cash, i.e., Philippine currency. If the sheriff had done so, and if PAL had complied with such a requirement, as it would have had to, one would have to agree that legal payment must be deemed to have been effected. It requires no particularly acute mind to note that a dishonest sheriff could easily convert the money and abscond. The fact that the sheriff in the instant case required, not cash to be delivered to him, but rather a check made out in his name, does *not* change the legal situation. PAL did *not* thereby become negligent; it did *not* make the loss anymore possible or probable than if it had instead delivered plain cash to the sheriffs.

It seems to me that the majority opinion's real premise is the unspoken one that the judgment debtor should bear the risk of the fragility of the sheriff's virtue until the money or property parted with by the judgment debtor actually reaches the hands of the judgment creditor. This brings me back to my earlier point that risk is most appropriately borne not by the judgment debtor, nor indeed by the judgment creditor, but by the State itself. The Court requires all sheriffs to post good and adequate fidelity bonds before entering upon the performance of their duties and, presumably, to maintain such bonds in force and effect throughout their stay in office.<sup>2</sup> The judgment creditor, in circumstances like those of the instant case, could be allowed to execute upon the absconding sheriff's bond.<sup>3</sup>

I believe the Petition should be granted and I vote accordingly.

#### **PADILLA, J., Dissenting Opinion**

From the facts that appear to be undisputed, I reach a conclusion different from that of the majority. Sheriff Emilio Z. Reyes, the trial court's authorized sheriff, armed with a writ of execution to enforce a final money judgment against the petitioner Philippine Airlines (PAL) in favor of private respondent Amelia Tan, proceeded to petitioner PAL's office to implement the writ.

There is no question that Sheriff Reyes, in enforcing the writ of execution, was acting with full authority as an officer of the law and not in his personal capacity. Stated differently, PAL had every right to assume that, as an officer of the law, Sheriff Reyes would perform his duties as enjoined by law. It would be grossly unfair to now charge PAL with advanced or constructive notice that Mr. Reyes would abscond and not deliver to the judgment creditor the proceeds of the writ of execution. If a judgment debtor cannot rely on and trust an officer of the law, as the Sheriff, whom else can he trust?

Pursued to its logical extreme, if PAL had delivered to Sheriff Reyes the amount of the judgment in CASH, i.e. Philippine currency, with the corresponding receipt signed by Sheriff Reyes, this would have been payment by PAL in full legal contemplation, because under Article 1240 of the Civil Code, "payment shall be made to the person in whose favor the obligation has been constituted or his successor in interest *or any person authorized to receive it*." And said payment if made by PAL in cash, i.e., Philippine currency, to Sheriff Reyes would have satisfied PAL's judgment obligation, as payment is a legally recognized mode for extinguishing one's obligation. (Article 1231, Civil Code).

Under Sec. 15, Rule 39, Rules of Court which provides that-

Sec. 15. Execution of money judgments.-The officer must enforce an execution of a money judgment by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and *paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment*. .... (emphasis supplied)

it would be the duty of Sheriff Reyes to pay to the judgment creditor the proceeds of the execution i.e., the cash received from PAL (under the above assumption). But, the duty of the sheriff to pay the cash to the judgment creditor would be a matter separate the distinct from the fact that PAL would have satisfied its judgment obligation to Amelia Tan, the judgment creditor, by delivering the cash amount due under the judgment to Sheriff Reyes.

Did the situation change by PAL's delivery of its two (2) checks totalling P30,000.00 drawn against its bank account, payable to Sheriff Reyes, for account of the judgment rendered against PAL? I do not think so, because when Sheriff Reyes encashed the checks, the encashment was in fact a payment by PAL to Amelia Tan through Sheriff Reyes, an officer of the law authorized to receive payment, and such payment discharged PAL'S obligation under the executed judgment.

If the PAL checks in question had not been encashed by Sheriff Reyes, there would be no payment by PAL and, consequently no discharge or satisfaction of its judgment obligation. But the checks had been encashed by Sheriff

Reyes giving rise to a situation as if PAL had paid Sheriff Reyes in cash, i.e., Philippine currency. This, we repeat, is payment, in legal contemplation, on the part of PAL and this payment legally discharged PAL from its judgment obligation to the judgment creditor. To be sure, the same encashment by Sheriff Reyes of PAL's checks delivered to him in his official capacity as Sheriff, imposed an obligation on Sheriff Reyes to pay and deliver the proceeds of the encashment to Amelia Tan who is deemed to have acquired a cause of action against Sheriff Reyes for his failure to deliver to her the proceeds of the encashment. As held:

Payment of a judgment, to operate as a release or satisfaction, even *pro tanto* must be made to the plaintiff or to some person authorized by him, or by law, to receive it. The payment of money to the sheriff having an execution satisfies it, and, if the plaintiff fails to receive it, his only remedy is against the officer (Henderson v. Planters' and Merchants Bank, 59 SO 493, 178 Ala. 420).

Payment of an execution satisfies it without regard to whether the officer pays it over to the creditor or misapplies it (340, 33 C.J.S. 644, citing Elliot v. Higgins, 83 N.C. 459). If defendant consents to the Sheriff's misapplication of the money, however, defendant is estopped to claim that the debt is satisfied (340, 33 C.J.S. 644, citing Heptinstall v. Medlin 83 N.C. 16).

The above rulings find even more cogent application in the case at bar because, as contended by petitioner PAL (not denied by private respondent), when Sheriff Reyes served the writ of execution on PAL, he (Reyes) was accompanied by private respondent's counsel. Prudence dictated that when PAL delivered to Sheriff Reyes the two (2) questioned checks (payable to Sheriff Reyes), private respondent's counsel should have insisted on their immediate encashment by the Sheriff with the drawee bank in order to promptly get hold of the amount belonging to his client, the judgment creditor.

ACCORDINGLY, I vote to grant the petition and to quash the court a quo's *alias* writ of execution.

*Melencio-Herrera, Gancayco, Sarmiento, Cortes, JJ., concurs.*

#### **Footnotes**

1 Art. 1249, Civil Code; e.g., Belisario v. Natividad, 60 Phil. 156 (1934); Villanueva v. Santos, 67 Phil 648 (1938).

2 See e.g., Sec. 46, Republic Act No. 296, as amended by Republic Act No. 4814.

3 See e.g., Sec. 9, Act No. 3598.